

Garland B. Garrett Jr



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

JAMES B. HUNT JR.  
GOVERNOR

DIVISION OF HIGHWAYS  
P.O. BOX 25201, RALEIGH, N.C. 27611-5201

GARLAND B. GARRETT JR.  
SECRETARY

August 22, 1996

MEMORANDUM TO: Mr. D. J. Bowers, P.E.  
Division 3 Engineer

FROM: B. J. O'Quinn, P.E. *B. J. O'Quinn*  
Assistant Manager *BJO*  
Planning and Environmental Branch

SUBJECT: New Hanover County, Smith Creek Parkway  
from 23rd Street to NC 132; State  
Project No. 8.2250106; T.I.P.# U-92C

Attached are the U. S. Army Corps of Engineers Individual permit and the DEM 401 Water Quality Certification for the above referenced project. A Major CAMA permit was not required for this section. All environmental permits have been received for the construction of this project.

BJO/eah

Attachment

- cc: Mr. G. T. Shearin, P.E.
- Mr. Kelly Barger, P.E.
- Mr. Don Morton, P.E.
- Mr. A. L. Hankins, P.E.
- Mr. Victor Barbour, P.E.
- Mr. Williams Rogers, P.E.
- Mr. N. L. Graf, FHWA
- Mr. W. D. Johnson
- Mr. H. Franklin Vick, P.E. (cover only)
- Mr. Gary Jessup (cover only)





DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA 28402-1890

REPLY TO  
ATTENTION OF

August 20, 1996



Regulatory Branch

Action ID. 199300597

Mr. H. Franklin Vick, P.E., Manager  
Planning and Environmental Branch  
North Carolina Department  
of Transportation  
Division of Highways  
Post Office Box 25201  
Raleigh, North Carolina 27611-5201

Dear Mr. Vick:

In accordance with the written request of March 15, 1996, and the ensuing administrative record, enclosed is a permit to place fill material into approximately 20.4 acres of wetlands associated with Smith Creek and it's tributaries to construct a portion of the Smith Creek Parkway, TIP U-92C, in Wilmington, New Hanover County, North Carolina.

If any change in the authorized work is required because of unforeseen or altered conditions or for any other reason, the plans revised to show the change must be sent promptly to this office. Such action is necessary, as revised plans must be reviewed and the permit modified.

Carefully read your permit. The general and special conditions are important. Your failure to comply with these conditions could result in a violation of Federal law. Certain significant general conditions require that:

- a. You must complete construction before December 31, 1999.
- b. You must notify this office in advance as to when you intend to commence and complete work.
- c. You must allow representatives from this office to make periodic visits to your worksite as deemed necessary to assure compliance with permit plans and conditions.

The enclosed Notice of Authorization, ENG Form 4336, must be conspicuously displayed at your worksite.

Sincerely,

G. Wayne Wright  
Chief, Regulatory Branch

Enclosures

Copy Furnished with enclosures:

Chief, Source Data Unit  
NOAA/National Ocean Service  
ATTN: Sharon Tear N/CS261  
1315 East-West Hwy., RM 7316  
Silver Spring, Maryland 20910-3282

Copies Furnished with special conditions and plans:

Mr. John Hefner  
U.S. Fish and Wildlife Service  
Fish and Wildlife Enhancement  
Post Office Box 33726  
Raleigh, North Carolina 27636-3726

Mr. Larry Hardy  
National Marine Fisheries Service  
Pivers Island  
Beaufort, North Carolina 28516

Mr. Thomas Welborn, Chief  
U.S. Environmental Protection  
Agency - Region IV  
Wetlands Regulatory Unit  
345 Courtland Street, N.E.  
Atlanta, GA 30365

Mr. John Parker  
Division of Coastal Management  
North Carolina Department of  
Environment, Health and  
Natural Resources  
Post Office Box 27687  
Raleigh, North Carolina 27611-7687

DEPARTMENT OF THE ARMY PERMIT  
North Carolina Department of Transportation

Permittee \_\_\_\_\_

Permit No. 199300597

Issuing Office CESAW-CO-R Wilmington District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:**

Place fill material into approximately 20.4 acres of wetlands associated with Smith Creek and its tributaries to construct a portion of the Smith Creek Parkway, TIP U-92C, in Wilmington, New Hanover County, North Carolina.

**Project Location:**

From NC Highway 132 (South College Road), west to North 23rd Street, Wilmington, New Hanover County, North Carolina.

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the work authorized ends on December 31, 1999. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

See enclosed sheet.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.



## SPECIAL CONDITIONS

a. All work authorized by this permit must be done in strict compliance with the attached plans, which are a part of this permit.

b. The permittee shall mitigate for the unavoidable impacts to wetlands associated with this project by providing 20.4 acres of wetland restoration or enhancement, on a 1:1 basis, at the Smith Creek Site and Spring Branch Site as indicated on exhibit A. The total wetland area restored or enhanced at these two sites shall be used only for the U-92C segment of Smith Creek Parkway.

c. A mitigation plan for the Smith Creek Site and Spring Branch Site shall be completed and approved by the District Engineer prior to the commencement of any roadway construction on TIP U-92C.

d. All construction and planting activities at the Smith Creek Site and the Spring Branch Site shall be completed no later than the completion of roadway construction on TIP U-92C.

e. The balance of mitigation requirements not provided by the Smith Creek Site and Spring Branch Site shall be provided by the preservation of not less than 150 acres of wetlands at the Dreyfors property.

f. The North Carolina Department of Transportation shall provide, no later than December 1, 1996, a legal description of the preservation area within the Dreyfors property that will be used as preservation mitigation for U-92C. This area will be maintained by the permittee in its natural condition in perpetuity. In addition, the Smith Creek and Spring Branch sites shall also be maintained by the permittee in its natural condition, as altered by the approved mitigation plan in perpetuity. Prohibited activities within the mitigation area specifically include, but are not limited to, the construction or placement of structures of any kind; the discharge of dredged or fill material (including waste debris); excavation; the cutting, removal or damage of any vegetation; and grading, leveling, or any other earth moving activity, except as clearly described in the mitigation plan approved pursuant to condition c, above.

g. Failure to institute and carry out the details of special conditions b, c, d, e, and f, above, and in accordance with all construction phases contained therein will result in a directive to cease all ongoing and permitted work within wetlands associated with the construction of the Smith Creek Parkway (U-92C), or such other remedy as the District Engineer or his authorized representatives may seek.

h. Prior to the commencement of any roadway work on U-92C, proof of NCDOT's ownership of the Smith Creek Property, Spring Branch Property, and Dreyfors property, including boundary surveys of those properties, will be provided to the District Engineer.

i. Any sale, lease or other conveyance of the Smith Creek Site, Spring Branch site, or Dreyfors property, shall include restrictions on the use of the property as described in these conditions, which conditions shall be enforced by the North Carolina Department of Transportation.

j. At the Hurst Creek crossing, the permittee or its contractor shall install four (4) 72-inch concrete pipe culverts in the causeway fill. The culverts will be placed generally parallel to the box culvert on 30-foot centers measured from the nearest edge of the box culvert. The invert of the culverts shall be at least one (1) foot below the grade of the existing floodplain.

k. All land disturbing activity associated with the highway widening will be conducted in a way that prevents a significant increase in turbidity outside the area of construction or construction-related discharge. Increases

such that the turbidity in the water body is 50 NTU's or less are not considered significant.

l. The permittee and its contractors and/or agents shall not excavate, fill, or perform mechanized land clearing at any time in the construction or maintenance of this project within waters and/or wetlands, except as authorized by this permit, or any modification to this permit. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit.

m. To ensure that all borrow and waste activities occur on high ground, except as authorized by this permit, the permittee shall require its contractors and/or agents to identify all areas to be used to borrow material, or to dispose of dredged, fill, or waste material. The permittee shall ensure that all such areas comply with condition (m.) of this permit, and shall require and maintain documentation of the location and characteristics of all borrow and disposal sites associated with this project. This information will include data regarding soils, vegetation and hydrology sufficient to clearly demonstrate compliance with special condition (m.) above. This information will be available to the Corps of Engineers on request.

n. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit.

o. Landclearing in wetlands shall not extend outward beyond the toe of the slope of roadway fill material as indicated on the plan sheets.

p. The temporary placement or double handling of excavated materials within waters or wetlands is not authorized.

q. All fill material will be clean and free of any pollutants except in trace quantities.

r. All fill material will be immediately stabilized and maintained to prevent erosion and sediment into adjacent waters or wetlands.

*O'Quinn*  
State of North Carolina  
Department of Environment,  
Health and Natural Resources  
Division of Water Quality

James B. Hunt, Jr., Governor  
Jonathan B. Howes, Secretary  
A. Preston Howard, Jr., P.E., Director



July 29, 1996

Mr. Frank Vick  
N.C. Department of Transportation  
P. O. Box 25201  
Raleigh, North Carolina 27611-5201

Dear Mr. Vick:

Re: Certification Pursuant to Section 401 of the Federal Clean Water Act,  
Proposed Smith Creek Parkway from 23rd Street to NC 132  
Project # 960257, COE # 199300597  
New Hanover County

Attached hereto is a copy of Certification No. 3077 issued to N. C. Department of Transportation dated 29 July, 1996.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,

A. Preston Howard, Jr. P.E.

Attachments

96257.wqc

cc: Wilmington District Corps of Engineers  
Corps of Engineers Wilmington Field Office  
Wilmington DWQ Regional Office  
Mr. John Dorney  
Mr. John Parker, Division of Coastal Management  
Central Files



P.O. Box 29535, Raleigh, North Carolina 27626-0535

Telephone 919-733-9960

FAX # 733-9919

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## NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

**THIS CERTIFICATION** is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality Regulations in 15 NCAC 2H, Section .0500 to N. C. Department of Transportation (DOT) resulting in 20.44 acres of wetland impact and 0.67 acres of water impact in New Hanover County pursuant to an application filed on the 15th day of March, 1st day of July and 19th day of July, 1996 to construct U-92C.

The application provides adequate assurance that the discharge of fill material into the waters of Smith Creek, Spring Branch, Bradley Creek, Hurst Branch and their tributaries in conjunction with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your application or as described in the Public Notice. If you change your project, you must notify us and you may be required to submit a revised application. For this approval to be valid, you must follow the conditions listed below. In addition, you should get any other federal, state or local permits before you go ahead with your project.

### Condition(s) of Certification:

1. That the activity be conducted in such a manner as to prevent significant increase in turbidity outside the area of construction or construction related discharge (50 NTUs in streams and rivers not designated as trout waters by DWQ; 25 NTUs in all saltwater classes, and all lakes and reservoirs; 10 NTUs in trout waters).
2. DOT is acquiring additional property adjacent to Spring Branch. This additional property will be used to relocate Spring Branch and increase the floodplain. Prior to road construction, DOT shall further coordinate the stream relocation design and receive approval from the N.C. Wildlife Commission as committed in DOT's 19 July 1996 correspondence.
3. DOT shall install four (4) 48 inch pipes (two on each side of the culvert) in addition to the 8' X 7' RCBC at Hurst Branch to facilitate fish passage and increase water movement. These pipes shall be placed parallel to the RCBC and at least 1 foot below the natural ground elevation. Should DOT decide to install two pipes instead of four pipes, comprehensive monitoring of the hydrology on both sides of the causeway for five (5) years is required. A monitoring plan shall be submitted to DWQ for approval prior to start of construction.
4. DOT shall provide 20 acres of compensatory wetland mitigation on-site so that the water quality of Smith Creek will not be degraded. These 20 acres shall be in the form of creation and/or restoration. At least 10 acres must be either bottomland hardwoods and/or swamp forest. The 20 acres must be jurisdictional wetlands according to the Corps of Engineers before the U-92A and B sections receive a 401 Water Quality Certification.

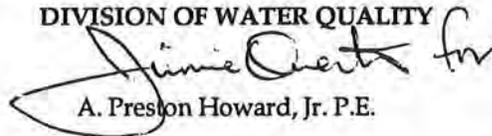
5. In addition to condition 4, DOT shall preserve 204.40 acres of jurisdictional wetlands at the Drefors South site. There shall be four (4) pipes placed under the Seaboard Railroad causeway, which bisects that site, to facilitate hydrology on the site prior to the 401 Certification issuance for U-92 A and B.
6. Wet concrete shall not be allowed to contact water.
7. Borrow and waste areas shall not be in wetlands.
8. Land clearing in wetlands shall conform to Method II (no clearing beyond toe of slope).

Violations of any condition herein set forth shall result in revocation of this Certification. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or coastal Area Management Act Permit. This Certification shall expire upon expiration of the 404 or CAMA permit.

If this Certification is unacceptable to you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 29th day of July, 1996

DIVISION OF WATER QUALITY

A handwritten signature in cursive script, appearing to read "A. Preston Howard, Jr.", is written over the typed name. The signature is enclosed within a hand-drawn oval.

A. Preston Howard, Jr. P.E.

WQC # 3077